

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4321 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PARAS WEDCOAT PVT LTD

Versus

UNION OF INDIA

Appearance:

M/S TRIVEDI & GUPTA for Petitioners
MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 23/06/1999

ORAL JUDGEMENT

Rule. Mr. P.B .Majmudar appears and waives service of
Rule on behalf of respondent No.1. In the facts and
circumstances of the case, the matter is taken up for
final hearing.

This petition is filed against the order passed by the Commissioner (Appeals), Central Excise and Customs, Ahmedabad on December 23, 1998 in Stay Order No. 948/98.

The petitioner company is engaged in the business of manufacturing poly coated poster paper falling under tariff sub-heading 4811.30. Show cause notices came to be issued to the petitioner company proposing to deny the benefits which were extended to the petitioner company on the grounds mentioned therein. The order-in-Original was passed by the authority on January 27, 1998. Being aggrieved by the said order, appeal was filed which is pending before the appellate authority. Along with the appeal, an application for stay was also made. By the impugned order, the appellate authority rejected the prayer for stay.

Looking to the order, however, it is clear that there is non-application of mind on the part of the appellate authority in not considering the relevant facts and circumstances. As held by Division Bench of this court in Special Civil Applications Nos. 1041/99 and group decided on March 12, 1999 and reiterated in number of other matters, it was incumbent upon the authority to consider the relevant facts and circumstances and after application of mind, to pass appropriate order considering the submissions made on behalf of the applicant-appellant. Since this is not done, the order deserves to be set aside and it is accordingly set aside. The appellate authority will now consider the case of the petitioner in accordance with law and pass appropriate order.

It was stated that goods were detained by the authorities during the pendency of the proceedings. It is open to the petitioner to make appropriate application and authorities will decide the same in accordance with law. Rule is made absolute to the aforesaid extent. No order as to costs.

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parekh